

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1781 of 1997

to

FIRST APPEAL No 1792 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

PUNJABHAI NATHABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR GAURANG H BHATT for appellants
Mr.Sudhansu Patel, AGP, for the respondent in FA
Nos. 1781 of 1997 to 1786 of 1997
Mr.P.G. Desai, GP, for the respondent in FA nos.1787
of 1997 to 1792 of 1997

CORAM : MR.JUSTICE M.H.KADRI and

MR.JUSTICE D.P.BUCH

ORAL COMMON JUDGMENT: (Per: Kadri, J.)

1. Appellants filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, claiming enhanced compensation for the land and super-structure by challenging common judgment and award dated October 31, 1996, rendered by learned Second Extra Assistant Judge, Sabarkantha, at Himatnagar, in Land Reference Cases Nos. 841 of 1988 to 926 of 1988. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. Executive Engineer, Dharoi Dykes & Stores Department, Himmatnagar, by his letter dated September 30, 1981, sent a proposal to the State Government to acquire agricultural lands of village Surpur, as they were likely to be submerged due to construction of 'Guhai Jalagar Yojna'. The said proposal was scrutinized by the State Government and notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on September 21, 1983. The Land Acquisition Officer, after considering objections lodged by the persons interested, submitted his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government issued declaration under Section 6 of the Act which was published in the Government Gazette on May 22, 1986. Interested persons were, thereafter, served with notices for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation before the Land Acquisition Officer. The Land Acquisition Officer, on the basis of materials placed before him, made his award on July 23, 1987, and offered compensation to the claimants at the rate of Rs.2 per sq.mtr. and also awarded compensation for super-structure as per the valuation fixed by the Executive Engineer. The claimants were dissatisfied with the compensation offered by the Land Acquisition Officer with regard to land and super-structure and, therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the matters to the Court for determination of appropriate compensation. Accordingly, references were made to the District Court, Sabarkantha, at Himatnagar, which were numbered as Land Reference Cases Nos. 841 to 926 of 1988. The claimants led common evidence in Land

Reference Case No.852 of 1988. On behalf of the claimants, Punjabhai Nathabhai Patel, was examined at Exh.20. The claimants examined Lalitbhai Patel at Exh.29, who had prepared valuation report of the super-structure and houses which came to be acquired for 'Guhai-Jalapur Yojna". Witness Lalitbhai Patel also produced rate of analysis at Exh.28 and valuation report of super-structure of the houses which came to be acquired at Exh.31 to 113. The Reference Court, on over all appreciation of oral as well as documentary evidence, determined market rate of the acquired lands at Rs.2/per sq.mtr and awarded compensation at 16% for super-structure which came to be acquired over and above compensation offered by the Land Acquisition Officer, which has given to rise to filing of these appeals by the original claimants. It may be stated that, out of 86 land reference cases, only the claimants of Land Reference Cases Nos. 852/88, 922/88, 924/88, 925/88, 846/88, 845/88, 848/88, 849/88, 853/88, 855/88, 854/88 and 847/88, have filed first appeals claiming enhanced compensation over and above awarded by the Reference Court.

3. Learned counsel for the appellants, Mr. G.H. Bhatt, has submitted that the evidence of claimant, Punjabhai Nathabhai Patel Exh.20, and expert, Lalitbhai Patel, at Exh.29 indicates that compensation offered by the Reference Court is inadequate. It is submitted by learned counsel for the appellants that, as per the evidence of Lalitbhai Exh.29 and valuation reports produced at Exh.31 to 113, the claimants were entitled to enhanced compensation for their acquired houses and super-structure. Learned counsel for the appellants vehemently submitted that the claimants were allotted other lands but had to construct new houses, and had to incur heavy expenses towards cost of construction of new houses on the land allotted to them in the year 1987, when possession of the acquired lands and houses was taken by the acquiring body on July 30, 1987. Learned counsel for the appellants further submitted that the claimants had led cogent and reliable evidence in support of their claim for enhanced compensation and, therefore, the appeals be allowed.

4. Mr. P.G. Desai, learned Government Pleader, assisted by Mr.S.S. Patel, AGP, submitted that the Reference Court, in absence of any reliable evidence produced by the claimants, had awarded enhanced compensation for super-structure at 16% over above compensation offered by the Land Acquisition Officer. It is submitted by learned counsel for the Government that

just and adequate compensation is awarded to the claimants and, therefore, the appeals be dismissed with costs.

5. We have heard learned counsel for the parties at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the parties for our perusal before deciding this group of appeals.

6. The submission of learned counsel for the appellants that compensation offered by the Reference Court was inadequate and at lower side deserves to be rejected. From the evidence of claimant, Punjabhai Nathabhai Patel, it is evident that village Surpur is interior village and not fully developed. Evidence of claimant, Punjabhai Nathabhai Patel, indicates that village Surpur was having population of 445 souls and was situated in remote place and did not have full amenities. The houses were also constructed prior to 60 years or more. No evidence was produced by the claimants to show as to what was the expense they had incurred for constructing their houses which came to be acquired. Evidence of expert, Lalitbhai Patel, Exh.29, who had visited the houses situated at village Surpur, after the possession was taken in July 1987, did not inspire confidence. In our opinion, he had no experience of valuing the house and super-structure. His evidence indicates that he had only acquired qualification of B.E.(Civil) in the year 1986 which indicates that he had not acquired enough experience to evaluate the super-structure on the acquired lands. He had not taken into consideration schedule of rates of different materials used in the construction of houses which came to be acquired. On the other hand, evidence produced by the acquiring body is found to be more reliable and accurate. In our opinion, evidence of Deputy Executive Engineer, Kanubhai Patel Exh.125, who had prepared valuation reports of these acquired super-structure inspires more confidence as he had valued super-structure by relying upon schedule of rates and price of materials as prevailing in the year 1983. The expert examined by the acquiring body had also taken into consideration age and nature of construction of the houses and had determined the market price of super-structure situated on the acquired land.

7. The Apex Court in catena of decisions has laid down the principle that, in determining compensation payable in respect of land with buildings, compensation cannot be determined by assessing value of the land and

the 'break-up-value' of the buildings separately. The land and the building constitute one unit and the value of the entire unit must be determined with all its advantages and its potentialities. (See A.I.R. 1968 Supreme Court 1201, The State of Kerala v. P.P. Hassan Koya, AIR 1988 Supreme Court 943, Administrator Genl. of West Bengal vs. Collector Varansi.) The Supreme Court, in the case of Ratankumar Tandon and others vs. State of U.P., reported in (1997) 2 Supreme Court Cases 161, has laid down that when land and building are acquired by a notification, the claimant is not entitled to separate valuation of the building and the land. They are entitled to compensation on either of the two methods and not both. If the building is assessed, it is settled law that the measure of assessment be based on either the rent received from the property with suitable multiplier or the value of the building is the proper method of valuation. In this case, since the land was separately valued, the building cannot be again separately valued and compensation awarded except the value of debris. Learned Government Pleader relying on the above decisions has urged that the Reference Court has erred in separately valuing the lands and buildings and awarding compensation for both. Learned counsel for the appellants could not dispute the settled legal position that in case of acquisition of superstructure only the value of superstructure cannot be separately valued. Therefore, in our opinion, the Reference Court has erred in separately valuing the land and superstructure. Therefore, the argument of learned Government Pleader that there cannot be separate assessment for land and building deserves to be accepted.

8. The claim for enhanced compensation for super-structure and land cannot be granted in view of the fact that the claimants, at the time of giving possession of their houses and lands, had taken away materials like doors, windows, tin roofs, corrugated iron-sheets to the new site which was allotted to them against the acquired lands. The claimants had not led evidence through their expert that he had taken into consideration cost of construction based on schedule of rates and price of materials prevailing in village Surpur. The expert had also not taken into consideration daily wages of mason and labourers as prevailing in the year 1983. Therefore, in our opinion, the evidence of experts examined by the claimants is totally unreliable and untrustworthy. Expert, Lalitbhai Patel, deposed that he had prepared rough notes at the time of taking measurements for the purpose of valuing super-structures, but he admitted in his evidence that he had not preserved rough notes

prepared by him at the time of inspecting acquired super-structures. This indicates that valuation report prepared by expert, Lalitbhai Patel, is based broadly on conjectures and guess work and does not reflect correct valuation of super-structures. None of the contentions raised by learned counsel for the appellants have any substance. Therefore, the appeals being meritless are liable to be dismissed.

9. We may add that, on the contrary, additional compensation awarded by the Reference Court at 16% over and above compensation offered by Land Acquisition Officer towards cost of super-structure is based on no material but since the State has not challenged the impugned judgment and award, we are left with no other alternative but to confirm the said enhanced compensation offered by the Reference Court.

10. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

(swamy)